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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 WAYNE A PORRETTI,

7 Plaintiff,

8 v.

9 DZURENDA, et al.,

10 Defendants.
11

Case No. 2:17-cv-01745-RFB-CWH

ORDER

12 Pro se plaintiff Wayne A. Porretti is an inmate incarcerated in the Nevada Department of
13 Corrections and currently housed at Lovelock Correctional Center. The parties are familiar with
14 the facts and procedural history of this case, and the court need not restate them here. Lastly, the
15 court retains jurisdiction in this case, despite defendants' interlocutory appeal. *See Plotkin v. Pac.*
16 *Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982) ("it is firmly established that an appeal from
17 an interlocutory order does not divest the trial court of jurisdiction to continue with other phases
18 of the case."); *see also United States v. Pitner*, 307 F.3d 1178, 1183 n.5 (9th Cir. 2002) ("during
19 an interlocutory appeal, the district court retains jurisdiction to address aspects of the case that are
20 not the subject of the appeal").

21 **I. MOTION TO EXTEND COPY WORK**

22 Plaintiff moves the court to extend his copy work account limit, because he has exceeded
23 his prison copy limit of \$100.00. (Mot. to Extend (ECF No. 55).) Plaintiff further argues that an
24 extension of the copy work limit is necessary because he needs to make copies of motions that he
25 is required to serve on defendants and he cannot afford to pay for such copies.

26 Under NDOC Administrative Regulation 722.01(7), copies of legal documents may be
27 made for inmates for a nominal fee. Inmates "can only accrue a maximum of \$100 debt for copy
28 work expenses for all cases, not per case." NDOC Regulation 722.01(7)(D). However, a court

1 may “order a prison to provide limited photocopying when it is necessary for an inmate to
2 provide copies to the court and other parties.” *Allen v. Clark Cnty. Det. Ctr.*, 2:10-CV-00857-
3 RLH-GWF, 2011 WL 886343, *2 (D. Nev. Mar. 11, 2011).

4 Here, the court finds it necessary to extend plaintiff’s copy work limit, given the pending
5 appeal and status of this case. Plaintiff’s copy work limit will be extended by \$10.00 at this time.
6 If plaintiff exhausts the \$10.00 and requires additional funds, he may file a motion requesting an
7 extension of the limit. Plaintiff is further advised to use his copying privileges sparingly, and to
8 refrain from filing numerous and duplicative motions.

9 **II. MOTION FOR TRANSCRIPT AND MOTION TO DISREGARD**

10 On February 4, 2019, plaintiff filed his motion for a production of a transcript of the
11 January 29, 2018 preliminary injunction hearing, at the government’s expense. (Mot. for
12 Production (ECF No. 56).) Defendants filed their response on February 19, 2019, objecting to the
13 request to the extent that the motion seeks to have defendants pay for the costs of the transcript.
14 (Resp. (ECF No. 56).) However, plaintiff moves the court to disregard the response because it
15 was untimely. (Mot. to Disregard (ECF No. 81).) Defendants did not respond to plaintiff’s
16 motion to disregard.

17 Under Local Rule 7-2(b), the “deadline to file and serve any points and authorities in
18 response to the motion is 14 days after service of the motion.” Further, Local Rule 7-2(d) states
19 that the “failure of an opposing party to file points and authorities in response to any motion,
20 except a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a consent to
21 granting of the motion.”

22 Here, defendants filed their response to the motion for transcript after the deadline
23 imposed by the Local Rules, and plaintiff requests that the court disregard the response for that
24 reason. Subsequently, defendants failed to respond to plaintiff’s motion to disregard. As such,
25 the court grants the motion to disregard. And because the court grants the motion to disregard,
26 the court must also grant the motion for a transcript. Defendants are directed to provide a copy of
27 the transcript for the hearing held on January 29, 2019 to plaintiff.

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1 **III. MOTION FOR DOCUMENT**

2 Plaintiff requests a copy of ECF No. 52, as he did not receive a copy when the document
3 was filed. (Mot. for Document (ECF No. 58).) The court declines to provide plaintiff a copy of
4 this filing. Upon granting plaintiff's motion to proceed *in forma pauperis*, the court directed the
5 Attorney General's Office to file under seal the last known address for defendants for whom the
6 Attorney General's Office cannot accept service. (Order (ECF No. 34).) ECF No. 52 contains
7 the information required by the court's order, and as such, plaintiff is not entitled to a copy. The
8 court denies the motion for a copy of ECF No. 52.

9 **IV. MOTION FOR COPIES**

10 Plaintiff moves the court to send him a copy of ECF No. 65, because he mailed the court
11 the only copy in his possession. (Mot. for Copies (ECF No. 67).)

12 Under the 28 U.S.C. § 1915(c) the court need only direct payment for the following *in*
13 *forma pauperis* expenses:

14 (1) printing the record on appeal in any civil or criminal case, if such printing is
15 required by the appellate court; (2) preparing a transcript of proceedings before a
16 United States magistrate judge in any civil or criminal case, if such transcript is
17 required by the district court, in the case of proceedings conducted under section
18 636(b) of this title or under section 3401(b) of title 18, United States Code; and
19 (3) printing the record on appeal if such printing is required by the appellate court,
20 in the case of proceedings conducted pursuant to section 636(c) of this title.

21 Also, under Local Rule 10-1,

22 An attorney or pro se party who wishes to receive a file-stamped copy of any
23 pleading or other paper must submit one additional copy and, if by mail, a self-
24 addressed, postage-paid envelope. A party who is granted leave to proceed in
25 *forma pauperis* need not submit a self-addressed, postage-paid envelope.

26 As such, plaintiff is not entitled to complimentary copies of court documents. However, the court
27 finds good cause to grant plaintiff's request for a one-time copy of ECF No. 65. The clerk of
28 court shall send a file-stamped copy of ECF No. 65 to plaintiff. In the future, if plaintiff wishes
 to receive a file-stamped copy of any filings, pursuant to Local Rule 10-1, he must submit one
 additional copy with the filing.

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1 **V. MOTION FOR SERVICE**

2 Plaintiff moves for an order directing the U.S. Marshals to serve defendants Rio Manalog,
3 Williams, Linda Fox, Dr. Aranas, Mr. Russell, Dr. Oakly, Nurse Tito, Bob Fulkner, and
4 Dzurenda. (Mot. for Service (ECF No. 70).)

5 Following the inmate early mediation in this case, the court ordered the Attorney
6 General's Office to provide the names of defendants for whom they would accept service of
7 process and to provide the names of defendants for whom it would not accept service. (Order
8 (ECF No. 34).) For any unserved defendants, the court ordered plaintiff to file a motion
9 identifying those defendants, requesting issuance of a summons, and specifying those defendants'
10 full names and addresses. (*Id.*)

11 The Attorney General filed the court-ordered notice of acceptance of service, stating that
12 the Attorney General does not accept service on behalf of defendant Romeo Aranas, but accepts
13 service on behalf of defendants Alberto Buencamino, James Dzurenda, Bob Faulkner, Linda Fox,
14 Rio Manalang, Francis Oakman (sued as Dr. Oakly), Perry Russell, and Brian Williams. (Notice
15 (ECF No. 51).) The Attorney General's Office also filed, under seal, Aranas' last known address.

16 As such, the court denies plaintiff's request to issue summons to Manalog, Williams, Fox,
17 Russell, Oakly, Tito, Fulkner, and Dzurenda, because the Attorney General's Office already
18 accepted service on their behalf. As for Aranas, the court declines to issue the proposed
19 summons) because it includes the wrong address for Aranas. (*See* ECF No. 70-1 at 15.) This
20 summons should be served at the last known address that was provided to the court under seal by
21 the Attorney General's Office. (Sealed Submission (ECF No. 52).) The court will provide a
22 blank summons form to plaintiff so he may resubmit the form. The court will also provide blank
23 USM-285 forms for plaintiff to complete for Aranas. Plaintiff should leave the space for Aranas'
24 address blank, and the clerk of court will complete this information using the sealed last known
25 address provided to the court.

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1 **VI. MOTION FOR ELECTRONIC CASE FILE**

2 Plaintiff moves the court for all, or a part of, the case management/electronic case file
3 system in this case. (Mot. for Electronic Case File (ECF No. 77).) Further, plaintiff alternatively
4 requests that he receive a copy of ECF No. 65 or ECF No. 66.

5 Under the 28 U.S.C. § 1915(c) the court need only direct payment for the following *in*
6 *forma pauperis* expenses:

7 (1) printing the record on appeal in any civil or criminal case, if such printing is
8 required by the appellate court; (2) preparing a transcript of proceedings before a
9 United States magistrate judge in any civil or criminal case, if such transcript is
10 required by the district court, in the case of proceedings conducted under section
11 636(b) of this title or under section 3401(b) of title 18, United States Code; and
12 (3) printing the record on appeal if such printing is required by the appellate court,
13 in the case of proceedings conducted pursuant to section 636(c) of this title.

14 As such, plaintiff is not entitled to complimentary copies of court documents. The court
15 will therefore deny plaintiff's request to the extent that he requests the court provide him a copy
16 of every filing in this case. As for plaintiff's request that the court provide him a copy of ECF
17 No. 65 or ECF No. 66¹, the court also denies this request, because a similar request was granted
18 earlier in this order.

19 **VII. DISCOVERY PLAN AND SCHEDULING ORDER**

20 On March 18, 2019, plaintiff submitted a discovery plan and scheduling order (ECF No.
21 90). Under Local Rule 16-1,

22 In actions by or on behalf of inmates under 42 U.S.C. § 1983 or the principles of
23 *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S.
24 388 (1971), and in forfeiture and condemnation actions, no discovery plan is
25 required. In those cases, a scheduling order must be entered within 30 days after
26 the first defendant answers or otherwise appears.

27 As such, plaintiff's discovery plan is denied. The court will issue a scheduling order shortly
28 following this order.

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30 ¹ It should be noted that ECF No. 66 contains the same document filed at ECF No. 65.

1 **VII. MOTION REGARDING ECF NO. 87**

2 Plaintiff states that upon transfer to Lovelock prison, all of his legal papers related to this
3 case disappeared. (Mot. re Answer (ECF No. 92).) Plaintiff further states that defendants cannot
4 produce a signature of receipt of any motions sent to plaintiff prior to the inmate early mediation.
5 (*Id.*) Liberally construing the motion, the court cannot determine the relief plaintiff seeks.
6 Therefore, the motion is denied without prejudice.

7 **VIII. MOTION FOR STATUS AND RULING**

8 Plaintiff moves for the status and decision on his pending motions. (Mot. for Status (ECF
9 No. 107).) Given that the court resolves plaintiff's pending motions in this order, the motion for
10 status is denied as moot.

11 **IX. MOTIONS TO AMEND**

12 Plaintiff filed two motions for leave to amend this case. (ECF Nos. 116, 120.)
13 Defendants did not file a response to the first motion, but filed a notice of non-opposition to the
14 second motion. (*See* Notice of Non-Opposition (ECF No. 127).)
15 Under Local Rule 15-1,

16 (a) Unless the court orders otherwise, the moving party must attach the proposed
17 amended pleading to a motion seeking leave of the court to file an amended
18 pleading. The proposed amended pleading must be complete in and of itself
19 without reference to the superseded pleading and must include copies of all
20 exhibits referred to in the proposed amended pleading.

21 (b) If the court grants leave to file an amended pleading, and unless the court
22 orders otherwise, the moving party must then file and serve the amended
23 pleading.

24 Here, neither of plaintiff's motions attach the proposed amended complaint. Therefore,
25 the motions are denied without prejudice. The second amended complaint (ECF No. 16) will
26 continue to serve as the operative complaint in this case. If plaintiff chooses to file an amended
27 complaint, plaintiff must file the amended complaint on the court's approved prisoner civil rights
28 form and it must be entitled "Third Amended Complaint." Plaintiff is advised all defendants
must be identified in the caption of the pleading and that all defendants must be named in the
section of the prisoner civil rights form designated for that purpose. Although the Federal Rules

1 of Civil Procedure adopt a flexible pleading policy, plaintiff still must give defendants fair notice
2 of each of the claims plaintiff is alleging against each defendant.

3 Furthermore, plaintiff is advised that if he files an amended complaint, the operative
4 complaint (ECF No. 16) no longer serves any function in this case. As such, if plaintiff files an
5 amended complaint, each claim and the involvement of each defendant must be alleged
6 specifically. The court cannot refer to a prior pleading or other documents to make plaintiff's
7 amended complaint complete. The amended complaint must be complete in and of itself without
8 reference to prior pleadings or other documents.

9 **X. MOTION FOR ECF FILE**

10 Plaintiff requests the court to correct Lovelock's policy of providing him only the first
11 page of the notice of electronic filing for each filing he submits. (Mot. for ECF File (ECF No.
12 131).) The court finds no legal basis to issue an order forcing Lovelock to provide plaintiff with
13 electronic copies of his filings. Therefore, the motion is denied.

14 **XI. CONCLUSION**

15 IT IS THEREFORE ORDERED that plaintiff's motion to extend copy work (ECF
16 No. 55) is GRANTED in the amount of \$10.00. The Nevada Department of Corrections must
17 extend plaintiff's prison copy work limit by another \$10.00.

18 IT IS FURTHER ORDERED that plaintiff's motion to disregard (ECF No. 81) is
19 GRANTED.

20 IT IS FURTHER ORDERED that plaintiff's motion for transcript (ECF No. 56) is
21 GRANTED. Defendants must provide a copy of the transcript for the hearing held on January 29,
22 2019.

23 IT IS FURTHER ORDERED that plaintiff's motion for document (ECF No. 58) is
24 DENIED.

25 IT IS FURTHER ORDERED that plaintiff's motion for copies (ECF No. 67) is
26 GRANTED. The clerk of court shall send plaintiff a file-stamped copy of ECF No. 65.

27 IT IS FURTHER ORDERED that plaintiff's motion for service (ECF No. 70) is DENIED
28 without prejudice.

1 IT IS FURTHER ORDERED that the clerk of court must send to plaintiff a blank
2 summons form and a blank USM-285 form, along with a copy of this order.

3 IT IS FURTHER ORDERED that plaintiff must complete the form as stated in this order
4 and file them with the court by July 12, 2019.

5 IT IS FURTHER ORDERED that upon receipt of the proposed summons and completed
6 USM-285 form from plaintiff, the clerk of court must issue the summons as stated in this order
7 and must deliver the summons, the USM-285 form, a copy of the second amended complaint
8 (ECF No. 16), and a copy of this order to the U.S. Marshal for service.

9 IT IS FURTHER ORDERED that plaintiff's motion for electronic case file (ECF No. 77)
10 is DENIED.

11 IT IS FURTHER ORDERED that plaintiff's discovery plan (ECF No. 90) is DENIED.
12 The court's scheduling order will follow this order.

13 IT IS FURTHER ORDERED that plaintiff's motion regarding ECF No. 87 (ECF No. 92)
14 is DENIED without prejudice.

15 IT IS FURTHER ORDERED that plaintiff's motion for status and ruling (ECF No. 107)
16 is DENIED as moot.

17 IT IS FURTHER ORDERED that plaintiff's motions for leave to amend (ECF Nos. 116,
18 120) are DENIED without prejudice.

19 IT IS FURTHER ORDERED that plaintiff's motion for ECF File (ECF No. 131) is
20 DENIED without prejudice.

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22 DATED: June 12, 2019

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C.W. HOFFMAN, JR.
25 UNITED STATES MAGISTRATE JUDGE
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